

1
2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 09-50026-reg

5 - - - - -x

6 In the Matter of:

7
8 MOTORS LIQUIDATION COMPANY, et al.

9 f/k/a General Motors Corporation, et al.,

10
11 Debtors.

12
13 - - - - -x

14
15 United States Bankruptcy Court

16 One Bowling Green

17 New York, New York

18
19 September 7, 2010

20 10:11 AM

21
22
23 B E F O R E:

24 HON. ROBERT E. GERBER

25 U.S. BANKRUPTCY JUDGE

1 HEARING re Motion of Debtors for Entry of Order Pursuant to 11
2 U.S.C. Section 363 and Authorizing the Debtors to Amend the
3 Terms of their Engagement Letter with AP Services LLC.

4
5 HEARING re Application by AP Services LLC as Crisis Manager to
6 the Debtors for Approval of the Success Fee.

7
8 HEARING re Motion of Debtors for Entry of Order Pursuant to
9 Sections 105, 363, and 365 of the Bankruptcy Code for an Order
10 Authorizing (I) the Debtors to Enter into the Stock Purchase
11 Agreement with General Motors Holdings, S.L., and (II) the
12 Assumption of the BMW Contract in Connection with the Debtors
13 Entry into the Stock Purchase Agreement.

14
15
16
17
18
19
20
21
22
23
24
25 Transcribed by: Dena Page

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S :

WEIL, GOTSHAL & MANGES LLP

Attorneys for the Debtors

767 Fifth Avenue

New York, NY 10153

BY: STEPHEN KAROTKIN, ESQ.

KRAMER LEVIN NAFTALIS & FRANKEL LLP

Attorneys for the Official Committee of Unsecured
Creditors

1177 Avenue of the Americas

New York, NY 10036

BY: ROBERT SCHMIDT, ESQ.

AlixPartners

40 West 57th Street

New York, New York 10019

BY: EDWARD J. STENGER, ESQ.

LAURA J. EISELE, ESQ. (TELEPHONICALLY)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DEPARTMENT OF JUSTICE

U.S. Attorney's Office

86 Chambers Street

3rd Floor

New York, NY 10007

BY: JOSEPH N. CORDARO, DEPUTY CHIEF, AUSA

DAVID S. JONES, DEPUTY CHIEF, AUSA

UNITED STATES DEPARTMENT OF JUSTICE

U.S. Attorney's Office

33 Whitehall Street

21st Floor

New York, NY 10004

BY: BRIAN S. MASUMOTO, ESQ.

MAYER BROWN, LLC

Attorneys for BMW AG

1675 Broadway

New York, New York 10019

BY: FREDERICK D. HYMAN, ESQ.

JEAN-MARIE ATAMIAN, ESQ.

1
2 HODGSON RUSS LLP

3 Attorney for Punch

4 One Grand Central Place

5 60 East 42nd Street

6 3rd Floor

7 New York, New York 10165

8 BY: S. ROBERT SCHRAGER, ESQ.

9
10
11 GODFREY & KAHN, S.C.

12 Motors Liquidation Company

13 333 Main Street

14 Suite 600

15 Green Bay, Wisconsin

16 BY: CARLA O. ANDRES, ESQ. (TELEPHONICALLY)

17
18 GODFREY & KAHN, S.C.

19 Motors Liquidation Company

20 One East Main Street

21 Suite 500

22 Madison, Wisconsin

23 BY: KATHERINE STADLER, ESQ. (TELEPHONICALLY)

24 BRADY C. WILLIAMSON, ESQ. (TELEPHONICALLY)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

GENERAL MOTORS LLC

General Motors Legal Staff

BY: LAWRENCE BUONOMO, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

THE COURT: Okay, let's start with GM next then,
please.

Mr. Masumoto, could you come up to a microphone or
ask the person next to you to do that please. There may be a
disconnect between what's on my calendar and what people may be
here on.

(Off the record.)

THE COURT: Okay. Is there anybody else who is here
on a matter other than either GM or Pali? Okay. Fair enough.

Now, Mr. Karotkin, we have a few different matters.
On the matters that are carried from last time, the AP Services
matter, I have I think four supplemental affidavits and I think
and Mr. Masumoto, I assume you're going to be taking the lead
on this although some of the earlier papers might have been
signed by Mr. Velez Rivera or somebody else. I guess the
question I have is now that those affidavits have been
satisfied, seemingly making the prima facie case that I thought
was in need of bolstering last time, does the US Trustee's
Office still object? And if it does, do you want to cross-
examine the witnesses, especially Mr. Case or can I now rule on
the matter?

MR. MASUMOTO: Your Honor, we have no desire to
cross-examine. We did have several conversations with AP
Services and debtors' counsel, and as a result we don't have

1 any need for any further evidentiary questions.

2 THE COURT: Okay. Do you want legal argument on the
3 existing record?

4 MR. MASUMOTO: Your Honor, with respect to the
5 success the -- I believe our position currently is that we're
6 satisfied with the documentation with the exception of the
7 objections we specifically raised regarding expenses. With
8 respect to the revised retention, we were satisfied by the
9 additional information in the declaration, as well as our
10 discussions.

11 THE COURT: Okay. So we're down to expenses then?
12 Forgive me, Mr. Masumoto.

13 MR. MASUMOTO: Yes, Your Honor, with respect to AP
14 Services and the expenses related to that initial period in
15 June of 2009.

16 THE COURT: Now historically Mr. Masumoto, we've been
17 able to deal with documentation of expenses-style issues by
18 authorizing payment of the undisputed portion and inviting the
19 applicant to have a dialogue with your guys to give them
20 further -- give you guys further support and then either once
21 you guys were satisfied allowing them or alternatively if you
22 kind of agree to disagree, teeing up the disputed portion.
23 What's your thinking vis-a-vie that now?

24 MR. MASUMOTO: Your Honor, we're fine with that. We
25 did receive on Friday some of the supplemental documentation.

1 There were still some outstanding issues that the applicant was
2 still researching. But with respect to undisputed amounts, I
3 have no objection to, you know, that being paid.

4 THE COURT: Okay. Well, folks my tentative, subject
5 to your rights to be heard would be now to approve the things
6 to which the US Trustee's Office no longer objects and to grant
7 that kind of arrangement that I just described with Mr.
8 Masumoto which is to approve the undisputed portion and to give
9 the process a little more time to play out on the disputed
10 portion with the thought that if the US Trustee's Office is
11 satisfied, then by an order -- by kind of so-ordering the
12 record, I will permit those to be paid if and when the US
13 Trustee's Office is satisfied. And if issues remain, to leave
14 the disputed portion for a follow-up hearing.

15 Is there an AP applicant or anybody else who would
16 want to be heard on that type of an approach? Mr. Karotkin?

17 MR. KAROTKIN: Stephen Karotkin, Weil, Gotshal &
18 Manges for the debtors. That approach sounds fine, Your Honor,
19 and I think that reflects the status of the record with respect
20 to the position taken by the United States Trustee. I am quite
21 confident that AP Services and the US Trustee can work out
22 whatever differences remain as to the expenses.

23 And as I understand what you are saying, sir, that
24 that issue would be reserved. The payment of the success fee
25 would be approved, as well as the amendment of the AP Services

1 retention agreement.

2 THE COURT: Yes, if I heard Mr. Masumoto right, with
3 the supplemental declarations that I received, I mentioned Mr.
4 Case, I didn't want to ignore the Katan and Mayer declarations
5 and I know I also have another Choch (sic) or Choate (sic),
6 forgive me if I am mispronouncing those.

7 MR. KAROTKIN: No, it's Choch.

8 THE COURT: It is Choch?

9 MR. KAROTKIN: Yes, sir.

10 THE COURT: And when I read them, I was satisfied
11 subject to any cross-examination rights that might be
12 requested. So what I would ask you or your designee to do, Mr.
13 Karotkin, is on the success fee, on the modification of the
14 terms and the undisputed portion of the expenses, to give me
15 one or more orders to paper the fact that they are now
16 approved.

17 And if the dialogue with the US Trustee's Office can
18 be completed in a way that doesn't materially delay the other
19 three things that I just mentioned, you can roll it into a
20 single order or you can do it by a supplemental one, whichever
21 you think skins the cat best. I am not ruling today on the
22 matters for which the dialogue is to continue but I am
23 approving everything else.

24 MR. KAROTKIN: Thank you, sir. And that would
25 include, Your Honor, as I understand it, the payments of the

1 amounts provided for in the amended retention.

2 THE COURT: Yes, because I don't understand those to
3 involve the expenses --

4 MR. KAROTKIN: That is correct.

5 THE COURT: -- that are still the subject of the
6 dialogue.

7 MR. KAROTKIN: That is correct, sir.

8 THE COURT: All right. Standby. Mr. Masumoto?

9 MR. MASUMOTO: Your Honor, I just wanted to mention
10 that in my conversations with AP Services this morning, there
11 was an issue that I thought they were here to address the Court
12 on. I don't know if you want -- Your Honor wants to hear all
13 sort of disputes at the same time or since they are here today.
14 Specifically, it had to do with the application of meal expense
15 limitations. Our office wanted to be consistent with the
16 application to all professionals. The AP Services wanted to
17 argue with Your Honor -- I'm sorry, Your Honor, just to be -- I
18 don't want to characterize it.

19 THE COURT: Wanted to be heard before me?

20 MR. MASUMOTO: Yes. Your Honor, my understanding is
21 that other professionals in this case have been imposed with
22 the twenty dollars per meal limitation and so we're trying to
23 be consistent with everyone. I believe AP Services wanted to
24 be able to present their case for a variation. I don't know if
25 Your Honor wants to hear that today or defer that to any other

1 disputes that we may have.

2 THE COURT: I hate to bring people back. Can we deal
3 with it without a material delay in the French sub-matter and
4 other things that we need to deal with today?

5 MR. MASUMOTO: That's fine with me, Your Honor. I
6 will defer to AP Services.

7 THE COURT: And you're willing to waive any further
8 briefing and so forth? You'll just have it out right now?

9 MR. MASUMOTO: Yes, Your Honor.

10 THE COURT: Okay. Let me hear from AP on why I
11 should have an exception on that one. Oh, hang on just a
12 minute. I've got to -- I am told that there are some attorneys
13 who are expecting to be heard by phone on this or at least to
14 listen in on phone. Let's pause the proceedings. Let's do it
15 now.

16 (Pause)

17 THE COURT: We can continue. Okay.

18 MR. STENGER: Good morning, Your Honor. Ted Stenger
19 of AlixPartners.

20 Your Honor, the issue is actually very narrow.
21 AlixPartners, most of our work and our staff's work is done at
22 the client location which is generally not in the city that the
23 individual lives in. So for example, on the Motors Liquidation
24 case, in the period of June and the first ten days of July of
25 2009, AlixPartners professionals were working on the case in

1 downtown Detroit, Michigan, in Warren, Michigan, in Saginaw,
2 Michigan, in various locations throughout Europe, in Shanghai,
3 in New York and probably a couple of other locations.

4 While it is typical -- it's not typical on our
5 assignments to be that far a flung, it is very typical for our
6 professionals to be providing services outside of their
7 location of their home. So as a result, our expense policy is
8 generally that dinners will be limited to fifty-five dollars
9 per person. The local rule in New York is I believe twenty
10 dollars for an individual dinner. I think that that is
11 intended generally to allow persons to charge dinners if they
12 have worked very late on a matter and at that point in time,
13 it's unreasonable to expect them to go home and either have
14 their spouse or significant other or themselves make dinner.

15 In our case, our employees are out of town for these
16 meal charges. Our firm has historically used that policy as
17 opposed to local court policy with the exception of cases where
18 we are, in fact, staffing them out of a local office. So for
19 example, we had a number of people who lived in the Detroit
20 Metropolitan area who were actually on that assignment. They
21 would not be charging dinners to General Motors typically
22 because -- whether they worked ten or twelve or fifteen hours
23 because that's actually not covered by our policy.

24 So what we would like is to be able to use our
25 internal policy of fifty-five dollars per individual per

1 dinner, as opposed to the local rule of twenty dollars.

2 THE COURT: Okay. Mr. Stenger. Mr. Masumoto?

3 MR. MASUMOTO: Your Honor, if I may? Again, the
4 Office of the United States Trustee just wanted to be
5 consistent with the other professionals. I believe other
6 professionals in this case have also had travels of -- many
7 travels to other locations and we have applied or at least this
8 court has applied that twenty dollar per cap on the amount of
9 the meal. The concern of fifty-five dollars, even if it were a
10 travel expense allowed is much higher than I think the courts
11 in this area have applied. I do recognize that some courts
12 will allow travel meals perhaps to be in excess of the twenty
13 dollars but fifty-five is certainly far in excess of the
14 permitted amount.

15 THE COURT: Okay. Mr. Stenger, any reply?

16 MR. STENGER: Yes, Your Honor. The fifty-five is an
17 absolute limit. Most individuals, it's your actual expenses
18 limited to fifty-five. So in a number of instances, I know
19 myself personally, I am not big on spending a lot of time
20 eating dinner after a long day. So I usually buy carryout and
21 it's ten bucks, five bucks, fifteen bucks.

22 I would be happy to provide and Mr. Masumoto and I
23 have spoken, I have not had a chance to finish the analysis of
24 the meal charges. I will do that and I will identify for him
25 an average across all of the meals, as well as identify all of

1 those meals that were up to the fifty-five limit and compare
2 that to the twenty dollar limit, so we know what we're talking
3 about here in terms of dollars.

4 THE COURT: I am not going to require that but I am
5 about to rule, unless you have anything else.

6 MR. STENGER: No, thank you, Your Honor.

7 THE COURT: All right. Folks, I am going to sustain
8 the US Trustee's Office objection and the following are the
9 basis for the exercise of my discretion in this regard. The
10 issue is not of course the extent to which the employees should
11 be allowed to be reimbursed for whatever needs to be expended.
12 The issue is the extent to which one kind of professional
13 should be subject to a different standard than the other
14 professionals in the case. I think based on other matters that
15 have been put before me, I can take judicial notice of the fact
16 that other professionals in this case have likewise had to
17 travel, especially for instance debtors' counsel had to spend a
18 lot of time at their client's offices in Michigan and
19 elsewhere.

20 And the issue is essentially a policy one as to
21 whether we should be making special rules for one kind of
22 professional. I assume subject to hearing something different,
23 that ever professional makes its own type of contribution to
24 the case and if they were invaluable I wouldn't be authorizing
25 the fees on them but the issue is whether there should be

1 different rules.

2 And I think under the circumstances that the same
3 rules that apply to Weil, to Kramer Levin and any number of
4 other professionals will also apply to AP Partners. And to the
5 extent they exceed the traditional cap, I assume that the
6 employees will still be reimbursed but they'll be absorbed as
7 overhead. And the other compensation for which the
8 professional receives is sufficient in my view to permit the
9 absorption of overhead.

10 For those reasons, Mr. Masumoto, your limited
11 objection is sustained and when you adjust the exact amount due
12 to AP Partners, the expense reimbursement will be capped no
13 more, no less than it is for other professionals in the case.

14 MR. MASUMOTO: Thank you, Your Honor.

15 THE COURT: Okay. Are we ready to move on to
16 Strasbourg?

17 MR. KAROTKIN: Yes, Your Honor.

18 THE COURT: Okay. And Mr. Karotkin, when you get to
19 the main lectern, pause for a minute because I have a
20 preliminary comment or two. Folks, you all should make your
21 presentations as you see fit but when you do I want you to help
22 me in a couple of respects.

23 First it seems to me that the Punch objection is a
24 classic example of business judgment and I need help as to why
25 the debtors exercise of their business judgment shouldn't be

1 given the normal respect that we do, especially if the failure
2 to assume and assign -- or to sell the stock here and to assume
3 and assign any contracts that I otherwise authorize to be
4 assumed and assigned, have the effect of saving both jobs and
5 expenses that the estate's unsecured creditors community would
6 otherwise have to eat.

7 The more serious issue in my regard is how I should
8 be dealing with the BMW objection because it kind of seems to
9 raise a kind of first cousin of an Orion issue which is that I
10 have something here which is at least seemingly plainly in the
11 interest of the estate and it seems to me that some of the
12 issues that BMW raises are not the kinds of issues that would
13 be susceptible to determination in the absence of more
14 extensive proceedings which would be exactly inconsistent with
15 what we try to do on 363 motions.

16 Now I tried to do my homework in preparation for
17 today but I saw a debtor reply on Punch but I didn't see one on
18 BMW and I assume absent chamber's error that that was
19 intentional on your part, Mr. Karotkin. So we've how I should
20 deal with BMW into the remainder of your remarks. Go ahead.

21 MR. KAROTKIN: Thank you, sir. Stephen Karotkin,
22 Weil, Gotshal, & Manges for the debtors.

23 Your Honor, I think that I can help you out a lot
24 with respect to BMW fairly easily and I apologize for the late
25 notice on this but just this morning a resolution was achieved

1 between the debtors, BMW and what I call new GM which is the
2 parent company of the purchaser of the stock, with respect to
3 the resolution of the objection raised by BMW as to the
4 assumption and assignment of the contract.

5 It's my understanding, Your Honor, and counsel for
6 BMW is here today, that subject to the terms of that agreement,
7 BMW will withdraw its objection to the sale and transfer and
8 assignment of his contract to the entity that is the purchaser
9 here, not to Punch but to this entity.

10 And what the debtors have agreed in connection with
11 that resolution is that as Your Honor may be aware, it's
12 reflected in our papers, an adversary proceeding was commenced
13 by MLC against BMW. BMW has asserted various counterclaims, I
14 believe. Both the complaint as well as the counterclaims would
15 be dismissed with prejudice in connection with the overall
16 resolution of this matter. So I think, Your Honor, that -- and
17 again, I apologize, that resolution was reached overseas this
18 morning. That's why we were unable to advise you over the
19 weekend.

20 But that, I believe, takes care of that issue
21 entirely. There would be no need for an evidentiary hearing to
22 the extent Your Honor would be prepared to approve this sale to
23 the new GM entity. Obviously, the Punch proposal by its own
24 terms is conditioned on an assumption and assignment of the
25 contract with BMW. Again, I don't want to speak for BMW but I

1 believe that the objection that they have filed would remain in
2 the event Punch were the prospective purchaser.

3 THE COURT: Mr. Karotkin, is this a good time for you
4 to just stand in place for a minute and for me to give BMW a
5 chance to comment on whether you got it right?

6 MR. HYMAN: Good morning, Your Honor. Rick Hyman
7 from Mayer Brown on behalf of BMW AG.

8 I stand behind what Mr. Karotkin represented to this
9 court. There had been discussions over the long weekend while
10 we were at our vacation homes and the folks over in Germany
11 were working very hard to resolve these issues and it was
12 reported to both Mr. Karotkin and myself this morning that they
13 have reached a settlement agreement. Mr. Karotkin is correct
14 that it resolves any issues as it relates to the transfer of
15 the contract to new GM. It would not resolve any issues as it
16 relates to the transfer of the contract to Punch which BMW
17 would still resist.

18 THE COURT: I understand. Now, Mr. Hyman, did I also
19 hear him right that the deal that the folks -- the business
20 folks put together will resolve not just the assumption and
21 assignment issue but the underlying adversary, as well?

22 MR. HYMAN: That's a critical component of it, Your
23 Honor.

24 THE COURT: Very good.

25 MR. HYMAN: The dismissal with prejudice of the

1 complaint is a condition to the agreement.

2 THE COURT: Okay.

3 MR. KAROTKIN: Your Honor, I have one correction if I
4 may?

5 THE COURT: Yes.

6 MR. KAROTKIN: I was not at my vacation home over the
7 weekend.

8 THE COURT: Fair enough. Okay.

9 MR. KAROTKIN: In fact, I don't have a vacation home.

10 THE COURT: In fact, people at your firm don't get
11 vacations.

12 MR. KAROTKIN: I didn't want to say that.

13 THE COURT: All right. I think then it's premature
14 for me to bless any resolution of the type that you folks just
15 had if it is contingent upon a non-Punch assignment until I
16 hear from Punch. So let's turn to that aspect of the motion
17 now, Mr. Karotkin and give Punch's counsel a chance to be
18 heard.

19 MR. KAROTKIN: Sure.

20 THE COURT: The BMW folks can remain at the counsel
21 table but I want to hear the Punch objection and then I will
22 hear the usual response and reply.

23 MR. SCHRAGER: Your Honor, Robert Schrager, Hudgson
24 Russ for Punch Corporation.

25 BMW -- excuse me, I am sorry, I got confused because

1 this is the first we've heard about the BMW resolution. The
2 debtor states three things basically with respect to the Punch
3 claim -- Punch proposal; one is that it's non-binding. That's
4 not correct. It is binding. Punch makes a clear, unequivocal
5 offer to purchase for three million dollars plus fifty percent
6 of the BMW claim, whatever that is. We don't know obviously
7 what the terms of the BMW resolution are but to the extent
8 there is an economic benefit to it, fifty percent of whatever
9 that economic benefit is would be added to the Punch proposal.
10 That's part of the Punch proposal.

11 The second aspect as Your Honor mentioned was
12 substantial risk. That, Your Honor, is zero quite frankly.
13 Footnote 3 of the debtors reply papers states that the debtor
14 doesn't even believe that there's any liability. So Punch does
15 not understand why the debtor believes that there's liability.
16 Punch is assuming all of that and there is no liability to the
17 debtor. They themselves in footnote 3 agree that under French
18 law, they would not be responsible. So we don't understand
19 that.

20 The third is that there is a only nominal difference
21 between the Punch offer and the GM offer, the new GM offer.
22 Your Honor, that's the difference between \$1.28 which was
23 proposed by new GM as the purchase price, one euro and three
24 million dollars plus fifty percent of the BMW transaction,
25 whatever that might be. Or if the BMW transaction doesn't take

1 place, the BMW claim which is estimated to be somewhere between
2 thirty-five million to one billion dollars.

3 That's not nominal in my way of thinking. I don't
4 understand how anybody thinks it's nominal. Three million
5 dollars to me isn't a nominal amount and I don't care how many
6 debtors they have. They claim that it's nominal because they
7 have so many debtors that nobody is going to see anything out
8 of that. It's still a higher and better offer.

9 Taking it in detail; Punch gave a binding and non-
10 contingent offer which creates an obligation for Punch to go
11 through with the purchase. It's clear. It's set forth. We
12 will purchase. MLC overstates its exposure. In their own
13 reply, they say that. They say that there's a question as to
14 whether there's an employee issue. There is no problem with
15 employees in Strasbourg.

16 Punch intends to operate this plant. Punch has
17 already arranged for additional contracts to be coming into
18 this plant. Nobody is going to be fired. The plant is not
19 going to be closed. We're not paying three million dollars to
20 close a plant. The French Works Council has the right to give
21 an advisory opinion. They do not have the right to say we
22 bless this. We don't bless this. You can't do it. You can do
23 it. They can give an advisory opinion.

24 Punch is prepared to sit down with them. Punch has
25 said it will honor all contracts. It will go forward with

1 everything that's there. Hence, they don't see that there's
2 any reason that the French Works Council will have a problem,
3 especially in light of the fact that there's additional work
4 coming in and additional people to be hired.

5 The debtor raises the issue, well this might be
6 subject to the French Court, whether the French Court will
7 approve it. Your Honor, it's our understanding that if Your
8 Honor approves the sale to Punch, the French Court will approve
9 the sale. There's no reason why they wouldn't. Punch is a
10 substantial company, willing to support its offer with good
11 hard cash. It's a substantial increase and everything else.

12 On the business judgment aspect, Your Honor, we have
13 real questions as to how fair this entire transaction has been
14 throughout the entire time or whether this is a sweetheart deal
15 that was arranged. On May 25, Punch gave an offer based upon
16 certain information that it had. That offer resulted -- was
17 one euro offer also. And that was based upon the information
18 that we had been given. That was then withdrawn. On May 26,
19 we now learn having looked at these papers, the GM offer, the
20 new GM debtor offer was put into place, also for one euro,
21 however, without anything else.

22 Your Honor, we think that this is a sweetheart
23 transaction. We are offering higher and better value to the
24 creditors and everyone else. And the business judgment is
25 highly suspect in this whole transaction.

1 THE COURT: Mr. Schrager, if the debtor had been
2 exercise deficient business judgment, I got a pretty competent
3 creditors committee counsel; don't you think that they would
4 have raised some concerns to me?

5 MR. SCHRAGER: Your Honor, I don't know if creditors
6 committee counsel has even looked at the Punch offer as of yet.
7 I haven't heard from creditors committee counsel at all on this
8 transaction. This case up, quite frankly, after the people in
9 Europe saw the application for approval of this. Until then,
10 they had no idea this whole thing was going on. I don't know
11 how creditors committee counsel can say the three million
12 dollars plus fifty percent of a claim that could be a
13 substantial amount of money is a nominal amount. I would be
14 interested in hearing creditors committee counsel stand up here
15 and say oh, yes, three million dollars is nominal.

16 THE COURT: Okay. Continue, please.

17 MR. SCHRAGER: I think that's it, Your Honor. I
18 think it's a higher and better offer. It gives the debtor and
19 all interested parties protection. The employees are
20 protected. The creditors are more than protected. And we
21 don't understand how there can be any question as to which
22 offer is a higher and better offer.

23 What is the advantage of taking less money than
24 taking more money if everyone who has, you know, any interest
25 in this entity is protected?

1 THE COURT: Okay. Thanks. I will hear next from the
2 debtor and then from anybody else who wants to be heard.

3 MR. KAROTKIN: Thank you, Your Honor. First of all,
4 it's not a higher and better offer. I am not even sure it's
5 higher in terms of dollar amount. I think we're talking about
6 certainly a real uncertainty as to whether Punch can even close
7 this deal and the risk associated with that. As Your Honor
8 knows, there's a September 30 drop dead date with respect to
9 the existing contract. Punch would have to engage with the
10 Workers council. There is no time period under French law as
11 to how long that could take.

12 And they suggest that their offer is unconditional.
13 Well the fact of the matter is, it's hardly unconditional. It
14 is expressly conditioned on the ability of the debtors to
15 assume and assign the BMW contract and you've already heard
16 BMW's position as to that issue with respect to a proposed sale
17 to Punch. That in and of itself would jeopardize this entire
18 prospective sale for an illusory -- and I do mean and illusory
19 -- three million dollars in the hope perhaps, perhaps, that at
20 some point in the future there would be some recovery on
21 litigation against BMW.

22 And I question, Your Honor, in addition whether
23 Punch's offer being contingent on the assumption and assignment
24 of the BMW contract, whether under those circumstances there
25 could be any claim against BMW with respect to that litigation

1 in any event going forward post-assumption which again, their
2 deal is conditioned on. They cavalierly suggest that well,
3 they'll take the employees and they'll take the new employment
4 contract, the new collective bargaining agreement. And as
5 we've indicated in our papers, Your Honor, well that collective
6 bargaining agreement is not available to any purchaser. That
7 new collective bargaining agreement is available to the entity
8 that new GM is proposing, purchase the stock of General Motor
9 -- of GM Strasbourg. So that's not available to them and they
10 cavalierly assert that; well it is available to them, it's not
11 contingent.

12 In addition, Your Honor, as we have noted in our
13 reply pleadings, the purchaser has antitrust clearance and is
14 prepared to move forward expeditiously with a closing. The
15 suggestion that this process was a sweetheart deal for new GM
16 is ridiculous and there's no evidence in the record to support
17 it. He certainly has presented no evidence to support that.
18 In fact, as our pleadings indicate and Mr. Choch is here to
19 testify and I am prepared to submit an offer of proof on behalf
20 of Mr. Choch, the debtors negotiated with Punch for a long time
21 in the hope that they would come forward with a deal. Punch
22 insisted that any deal it proposed be conditioned on a new
23 agreement with GM -- with new GM pursuant to which they would
24 get some assurances as to future commitments for the supply of
25 transmissions, pursuant to which they would have the ability to

1 use new GM technology.

2 They were unable to reach an agreement with new GM.
3 New GM was under no obligation to enter into an agreement with
4 Punch. It could do whatever it felt was in its own economic
5 interest. Punch walked away from that transaction. And now
6 all of the sudden they come forward as a spoiler. Basically
7 what you have here, Your Honor, is a three million dollar
8 option for -- I'm not suggesting that three million dollars is
9 not a significant amount of money even for me with no vacation
10 home, it's a significant amount of money, but it's an illusory
11 amount of money, Your Honor. There's no assurance this will
12 close. And from the perspective of the debtors' business
13 judgment, the conditional nature of the Punch proposal, three
14 million dollars is not an appropriate risk to take when if we
15 do proceed with the offer that is before Your Honor, we know it
16 will close. We know the BMW issue has been resolved. And we
17 know, most importantly, Your Honor from the perspective of
18 these debtors' estates that a major issue in the context of the
19 windup of these estates meaning the disposition of General
20 Motors Strasbourg will be addressed, will be finalized, will be
21 done with.

22 It has been a major issue that has consumed a fair
23 amount of resources of MLC. As you know, they have been trying
24 to sell it for some period of time. It assures the continued
25 operation of the facility and the preservation of twelve

1 hundred jobs. Whether or not that liability would ever come
2 back to MLC in the United States, Your Honor, in the event
3 there were a shut down, we hope not, but of course there could
4 be no certainty as to that.

5 As I said, this transaction ties everything up in a
6 neat little bow. We are done. As Your Honor knows last week,
7 as I think you know, we filed a plan and disclosure statement.
8 We've scheduled a disclosure statement hearing with Your Honor
9 for October 21. Again, this was a major item. We are moving
10 towards consummating a plan in these cases and making
11 distributions to creditors. And this element of this deal
12 brings more certainty to achieving that goal and most
13 importantly, shields the estate from liability from a rejection
14 of contracts, from any potential liability from new GM, from
15 any potential liability from BMW. It resolves the BMW
16 litigation.

17 And based on that, based on the debtors' business
18 judgment, taking all of those factors into account, it is the
19 debtors' business judgment and the debtors' board's business
20 judgment which has nothing, the board is totally unrelated to
21 new GM, that this deal is higher and better. And, Your Honor,
22 as I said, I am prepared to make an offer of proof from Mr.
23 Choch, if you would like an evidentiary basis and he's
24 available for cross-examination.

25 THE COURT: Well if I needed an evidentiary hearing,

1 we would have to go by the practices under the case management
2 order and the Court's local rules which would make an offer of
3 proof on the fly today inappropriate. But I take it your point
4 is that they haven't put in any arguments that go to the
5 debtors' business judgment and that the debtors' business
6 judgment is self-evident.

7 MR. KAROTKIN: Yes, sir, absolutely.

8 THE COURT: Okay. Before I give Mr. Schrager an
9 opportunity to reply, does anybody else want to be heard? Mr.
10 Schmidt? Creditors Committee?

11 MR. SCHMIDT: Good morning, Your Honor. For the
12 record, Robert Schmidt from Kramer Levin on behalf of the
13 committee.

14 Your Honor, the committee did with its advisors look
15 closely at these transactions and did an investigation and is
16 satisfied that the debtors has exercised an appropriate
17 exercise of the debtors' business judgment. The committee is
18 very focused on the potential for increase in claims and that's
19 really the most important aspect of the wind down for the
20 committee.

21 While three million dollars is three million dollars,
22 firstly it's not particularly significant in the context of
23 this case. More importantly from the committee's perspective,
24 it's not likely to enhance the committee's recoveries at all.
25 It does not go to the general unsecured -- it does not go to

1 satisfy the general unsecured claim pool.

2 So we are much more focused on the avoidance of
3 potential expenses down the road if this transaction doesn't
4 consummate. And we believe that the debtor has appropriately
5 exercised its business judgment. As Mr. Karotkin pointed out,
6 there's a separate independent board that does include
7 designees of the committee. We have every reason to believe
8 that they exercised with all due diligence their obligations
9 and fulfilled their fiduciary duties.

10 So with that, Your Honor, the committee is supportive
11 of the debtors position in going forward with the transaction
12 as is.

13 THE COURT: Okay. Thank you. Anybody else before I
14 give Mr. Schrager a chance to respond? Mr. Schrager, reply?

15 MR. SCHRAGER: Your Honor, just in conclusion I think
16 that Punch should be afforded the opportunity to have someone
17 look at the two transactions and say which is the higher and
18 better offer, as opposed to simply the board saying that in
19 their business judgment that makes sense. We keep hearing
20 about these --

21 THE COURT: Pause pleas, Mr. Schrager. If you are
22 talking about me as that someone that would change the standard
23 by which we judges look at these from a business judgment
24 standard to a best interest of the estate standard which we use
25 in 9019s and some limited other matters but historically have

1 not applied to 363 transactions, most significant of course
2 being the one earlier in this case after the three days of
3 trial leading up to my opinion which is now published around
4 the time of the fourth of July weekend of 2009. Were you
5 talking about some independent fiduciary whom I might appoint
6 or were you talking about me?

7 MR. SCHRAGER: No, I was talking about an independent
8 fiduciary looking at it, Your Honor, to determine which is
9 fairer. The whole claim that I -- the whole argument I've
10 heard as to why the new GM offer is better than the Punch offer
11 is very simple. They're increased liabilities. I don't know
12 what they're talking about. They themselves in their own
13 papers say they don't believe that they're liable. We're
14 talking about a speculation that there's some increased
15 liability that we don't think we're liable for but maybe we
16 are. And for that reason, we're going to turn down three
17 million dollars as opposed to \$1.28.

18 Your Honor, it's that black and white. We have an
19 illusionary claim that there is some liability and for that we
20 should balance against hard cash. That's -- it's fairly black
21 and white, just on that point alone. I don't see where Your
22 Honor can say that that is an exercise of good business
23 judgment. I don't see where anyone can say that.

24 THE COURT: Okay. Thank you. All right. We'll take
25 a recess. I would like everybody back here at 11 o'clock and I

1 will rule on that matter.

2 (The Court is in recess at 10:54 a.m.)

3 THE CLERK: All rise. Have seats, please.

4 ^THE COURT: I apologize for keeping you all waiting.

5 Folks, I am approving the sale of the stock of the Strasbourg
6 transmission manufacturing subsidiary to the new GM affiliate
7 finding that the standards for approval of the sale under
8 Lionel and its progeny and my earlier extensive discussion of
9 the law underlying 363 sales in the earlier decision in this
10 case that I issued on the fourth of July weekend of 2009 have
11 been fully satisfied. My findings of fact, conclusions of law
12 and basis for the exercise of my discretion in connection with
13 this determination follow.

14 Punch didn't request an evidentiary hearing here.
15 However, I likely wouldn't have granted one anyway as I see no
16 material disputed issues of fact. The undisputed facts in this
17 case show both "good business reason for the sale," as required
18 under the Second Circuit's decision in Lionel and its progeny,
19 and also an appropriate exercise of business judgment which is
20 the standard for approval of transactions of this character
21 involving sales under 363.

22 The basis for the business judgment include the
23 extensive marketing effort that took place before today, the
24 review of a disinterested board, the certainty of closing the
25 transaction that the debtors asked me to approve, the increased

1 certainty for saving up to twelve hundred jobs, the ability to
2 more seamlessly proceed with the collective bargaining
3 agreement and decreased claims against the estate included but
4 not limited to the arguably separate issue of the ability to
5 resolve the BMW litigation which is complex and which has in
6 addition to the usual commercial issues, forum selection issues
7 that also impact upon the underlying controversy.

8 When the creditors committee observed that it
9 supported the sale, it didn't surprise me that the creditors
10 committee was satisfied with the exercise of business judgment
11 here or that the creditors committee supported the sale, for
12 among other reasons it's potential to reduce the claims against
13 the estate which are an important aspect of creditors
14 recoveries in this case.

15 As a conclusion of law, I must reject Punch's implied
16 suggestion that I should conduct my own review of which
17 purchaser is more in the interest of the estate and its express
18 suggestion that I should appoint some kind of independent
19 fiduciary to evaluate the two offers and choose the better one.

20 My questioning in oral argument suggested my
21 difficulties with each approach. The first, that anything
22 other than a business judgment test or as stated slightly
23 differently, a good business reason test, is inconsistent with
24 the law. I discussed it at length last year, canvassing the
25 authority in this area albeit it in the context of a much more

1 extensive sale, a 363 motion is determined by a business
2 judgment test, not a best interest of the estate test such as
3 by way of example, a 9019 motion would be.

4 And the arguments I heard were couched in terms of
5 business judgment. Ultimately, they were in a best interest
6 analysis asking me to determine that Punch's offer really was
7 the better one for the creditors in this case. I or any other
8 judge should not appropriately be making a determination based
9 on those standards in a request for a 363 approval.

10 Similarly, there is no authority for the notion that
11 we judges should appoint one or more independent fiduciaries to
12 evaluate competing offers to determine which is better for the
13 estate, especially when a debtor is under the control of an
14 independent and disinterested board and where the transaction
15 has the support of the creditors committee which is, of course,
16 a fiduciary of a more statutorily recognized type which also
17 has at least in this context, needs and concerns that are very
18 similar to those that I or any other judge would have.

19 Accordingly, the debtor is to settle an order in
20 accordance with this ruling on no less than two business days
21 notice by hand, fax or email or seven calendar days notice if
22 it chooses to issue notice of settlement by snail mail, by US
23 mail.

24 The stay of effectiveness of this order, however,
25 will not be waived. Therefore, permitting a request for a stay

1 of this ruling at the district court if one is desired. I will
2 say, however, that considering the needs of the debtor in this
3 case and the best interest of the estate and what I perceive to
4 be the not particularly close issues in this case, and the
5 other standards for a stay -- seeking a stay pending appeal,
6 you can and should if you take it up the street, tell the
7 district court that I have considered whether I should issue a
8 stay. I have determined that I should not; that is, no stay
9 beyond the period provided under the bankruptcy rules and that
10 any further application to the bankruptcy court for a stay
11 pending appeal is dispensed with and waived. Any stay requests
12 should go to the district court, not to me. I don't think
13 it's close enough to warrant me issuing a more extensive stay
14 ruling or granting a stay myself.

15 Now, Mr. Karotkin, on the BMW understandings which
16 were reached so recently, is it your thought that there will be
17 a formal 9019 at least with respect to the adversary or how is
18 that going to proceed?

19 MR. KAROTKIN: Well, Your Honor, I really haven't
20 thought about it that much but my initial thought was simply to
21 embody that in the sale order in connection with the assumption
22 and assignment of the contract.

23 THE COURT: The parties whose ox would be gored by
24 that kind of a determination would be the unsecured creditor
25 community and the US government, which still has claims as a

1 secured creditor -- do I still have a US Attorney Office
2 representative here? I guess I need to know from the two main
3 creditor constituencies whether they would be comfortable with
4 that approach or whether they need the debtor to do anything
5 more extensive.

6 MR. CORDARO: Good morning, Your Honor. Joseph
7 Cordaro from the United States Attorney Office from the
8 Southern District of New York.

9 And not in an attempt to circumvent Your Honor's
10 question but as Mr. Karotkin noted, this is the first we're
11 hearing about this also. So we haven't had a chance to
12 evaluate it either. So at this point, we would just like to
13 evaluate it and then get into contact with Mr. Karotkin with
14 the government's position on that.

15 THE COURT: Mr. Schmidt?

16 MR. SCHMIDT: Yes, Your Honor. From the committee's
17 perspective, we'll certainly want to take a look at the details
18 and we will certainly move as quickly as possible to review the
19 settlement within the time frame contemplated by the notice of
20 settlement order and so forth.

21 THE COURT: Okay. Mr. Karotkin, I would waive a more
22 extensive 9019 presentation on the basis that the two parties
23 whose ox's have been gored know what this is about as such time
24 as they're comfortable with waiver. But I think you need to
25 get their okay. If you can give me a green light with some

1 kind of written consent after each has had the opportunity to
2 do its due diligence, I would do it. Otherwise, you'll have to
3 tee up a simple 9019.

4 MR. KAROTKIN: Very well, sir. Thank you.

5 THE COURT: Okay. Do we have any further GM business
6 today?

7 MR. KAROTKIN: No, I don't believe so.

8 THE COURT: Okay. Thank you.

9 (Whereupon these proceedings were concluded at 11:29 AM)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

RULINGS

	Page	Line
Application for Approval of the Success Fee -		
granted	9	5
Application for Amendment of AP Services		
retention agreement - granted	9	5
US Trustee objection to fees - sustained	15	9
Sale of the stock of the Strasbourg		
transmission manufacturing subsidiary		
to the new GM affiliate - approved	32	5

C E R T I F I C A T I O N

I, Dena Page, certify that the foregoing transcript is a true
and accurate record of the proceedings.

DENA PAGE

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: September 8, 2010